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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

APR 04 2012

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POLICE DEPARTMENT OF THE CITY OF BURBANK (erroneously sued as an  
independent entity named “BURBANK POLICE DEPARTMENT”)

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

OMAR RODRIGUEZ; CINDY GUILLEN-  
GOMEZ; STEVE KARAGIOSIAN; ELFEGO  
RODRIGUEZ; AND JAMAL CHILDS,

Plaintiffs,

v.

BURBANK POLICE DEPARTMENT; CITY  
OF BURBANK; AND DOES 1 THROUGH  
100, INCLUSIVE,

Defendants.

BURBANK POLICE DEPARTMENT; CITY  
OF BURBANK,

Cross-Complainants,

v.

OMAR RODRIGUEZ, an Individual;

Cross-Defendant.

Case No. BC 414602

Judge: The Honorable Joanne O'Donnell  
Dept.: 37

**DEFENDANT CITY OF BURBANK'S  
BRIEF RE PLAINTIFF STEVE  
KARAGIOSIAN'S FAILURE TO  
EXHAUST ADMINISTRATIVE  
REMEDIES**

[Declaration of Veronica von Grabow;  
Appendix Of Non-California Authorities Filed  
Concurrently Herewith]

File Date: May 28, 2009  
Trial Date: March 19, 2012 (Karagiosian)

Discovery Referee: Hon. Diane Wayne, Ret.

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1     **II.     STATEMENT OF FACTS**

2             On or about May 27, 2009, a complaint identifying Karagiosian as the complaining party  
3     was submitted electronically to the DFEH. That complaint is attached to the First Amended  
4     Complaint in this action ("FAC") as Exhibit E thereto, and marked for identification as Exhibit  
5     158 at trial. When asked about the DFEH complaint during trial, Karagiosian testified that his  
6     attorneys filed it on his behalf and that he has no memory of seeing, reviewing, approving or  
7     authorizing the DFEH complaint:

8                     BY MS. SAVITT: THAT IS AN ADMINISTRATIVE CHARGE THAT  
9                     WAS FILED ON YOUR BEHALF WITH THE DEPARTMENT OF  
                      FAIR EMPLOYMENT AND HOUSING; CORRECT?

10                    A    ON MY BEHALF, YES.

11                    Q    AND WHAT WAS -- AND YOUR LAWYER FILED IT FOR  
12                        YOU; RIGHT?

13                    A    THAT'S RIGHT.

14                    Q    YOU DIDN'T SIGN IT, DID YOU?

15                    A    I DON'T BELIEVE SO.

16                        \*\*\*

17                    Q    DID YOU REVIEW THIS DOCUMENT BEFORE IT WAS  
18                        SUBMITTED TO THE DEPARTMENT OF FAIR EMPLOYMENT  
                      AND HOUSING?

19                    A    I DON'T KNOW IF I DID. I CAN'T TELL YOU IF I DID OR  
                      DIDN'T. IT'S POSSIBLE I DID. I DON'T KNOW.

20                    Q    YOU DON'T KNOW? OKAY.

21     Reporter's Daily Transcript of Proceedings ("Trial Tr."), March 27, 2012, at page 188:6-14  
22     (Declaration of Veronica von Grabow ("von Grabow Decl."), Ex. A); March 28, 2012, at 21:14-19  
23     (von Grabow Decl., Ex. B).

24  
25  
26     \_\_\_\_\_  
26     (...continued)

27             administrative remedies is 'a jurisdictional prerequisite to resort to the courts.' [Citation]."  
27             (*Johnson v. City of Loma Linda* (2000) 24 Cal. 4th 61, 70.)

28     *Campbell v. Regents of the University of Cal.*, 35 Cal. 4th 311, 321 (2005).

1     **III.     LEGAL ARGUMENT**

2             **A.     A Plaintiff's Failure To File A Verified DFEH Complaint Entitles The**  
3                     **Defendant To Judgment As A Matter Of Law On FEHA Claims**

4             Before commencing a civil lawsuit under the FEHA, it is a *jurisdictional prerequisite* that  
5     the plaintiff file a verified administrative complaint with the DFEH. *See Okoli v. Lockheed*  
6     *Technical Operations Co.*, 36 Cal. App. 4th 1607, 1613 (1995) (“in the context of the FEHA,  
7     exhaustion of the administrative remedy is a jurisdictional prerequisite to resort to the courts”);  
8     *Blum*, 141 Cal. App. 4th at 422 (“failure to exhaust an administrative remedy is a jurisdictional,  
9     not a procedural, defect”); Cal. Govt. Code §§ 12960(b)(DFEH complaint must be verified) and  
10    12965(b).

11            If a plaintiff fails to file a verified administrative complaint, the plaintiff has failed to  
12    exhaust his administrative remedies, and the defendant is entitled to judgment in its favor as a  
13    matter of law. *See, e.g., Greenly v. Sara Lee Corp.*, 2008 WL 1925230, 13-15 (E.D. Cal. 2008)  
14    (court granted summary judgment for employer on FEHA claims where employee’s attorney filed  
15    a DFEH complaint which had not been verified by the plaintiff); *Cole v. Antelope Valley Union*  
16    *High School Dist.*, 47 Cal. App. 4th 1505, 1511-1515 (1996) (court affirmed summary judgment  
17    for individual defendants because employee failed to exhaust his DFEH administrative remedies  
18    with respect to those individuals); *Martin v. Lockheed Missiles & Space Co., Inc.*, 29 Cal. App.  
19    4th 1718, 1725-1730 (1994) (court affirmed summary judgment for employer on FEHA claims  
20    because employee failed to exhaust her DFEH administrative remedies with respect to those  
21    claims).

22            **B.     Karagiosian Did Not Verify His DFEH Complaint**

23            Although Karagiosian’s attorneys electronically submitted a complaint to the DFEH in  
24    Karagiosian’s name, that complaint was not verified by Karagiosian. Indeed, Karagiosian testified  
25    during trial that he has no memory of seeing, reviewing, approving or authorizing the DFEH  
26    complaint. The burden of proof is on Karagiosian to establish that he filed a properly verified  
27    DFEH complaint. This he did not do and his undisputed testimony establishes he cannot. This  
28    entitles Burbank to judgment on Karagiosian’s FEHA causes of action as a matter of law.

1        *Greenly v. Sara Lee Corp.* is squarely on point. The plaintiff in that case, like Karagiosian,  
2 had not seen his DFEH complaint before. *Greenly, supra*, at 13. Based on that fact, the *Greenly*  
3 court granted summary judgment, because the plaintiff had failed to verify his DFEH complaint.  
4 *Id.* at 13-14.

5        Any allegation Karagiosian makes that his complaint was verified should also fail on the  
6 ground that Karagiosian's attorneys never showed him the complaint to ensure the allegations  
7 were true. Indeed, courts have not only held that such a purported "verification" is ineffective (*see*  
8 *Greenly* at 13), but an attempt by an attorney to hold out a document as "verified" by a client when  
9 in fact the client has not verified it is wholly unethical. In *Drociak v. State Bar of California*, 52  
10 Cal. 3d 1085 (1991), the California Supreme Court disciplined an attorney for conduct that is  
11 indistinguishable from that in the instant case. In *Drociak*, the attorney filed purportedly  
12 "verified" responses to interrogatories (attaching pre-signed verifications) without first consulting  
13 the client to ensure the asserted facts were true. *Id.* at 1090. The Court held the attorney's  
14 conduct was "a clear and serious violation of the statutes and rules." *Id.* In reaching its decision  
15 to impose discipline, the Court noted that the use of pre-signed verifications "posed a threat to the  
16 administration of justice (in that unverified information in discovery responses might be  
17 inaccurate, and the opposing party might rely on that information in agreeing to an "undeserved"  
18 settlement)[.]" *Id.* at 1088.

19        Here, as in *Drociak*, Karagiosian's attorney submitted the DFEH complaint with only  
20 Karagiosian's name on it, thereby indicating that Karagiosian verified the complaint, when in fact  
21 Karagiosian had never seen it to ensure the allegations were true. Such a purported "verification"  
22 is improper. Accordingly, Karagiosian has failed to exhaust his administrative remedies, and  
23 Burbank is entitled to judgment as a matter of law his FEHA claims. *Cf. Steele v. Totah*, 180 Cal.  
24 App. 3d 545, 549, 554 (1986) (deficient verification by plaintiff's attorney led to summary  
25 judgment for defendant; attorney improperly verified plaintiff's responses to requests for  
26 admission, and defendant was entitled to summary judgment based on facts deemed admitted by  
27 the improperly-verified requests).

1           C.     Karagiosian's Attorneys Cannot Retroactively Claim That They Verified  
2                     Karagiosian's DFEH Complaint On His Behalf

3           In an attempt to salvage his DFEH complaint, Karagiosian may argue that his attorneys  
4 verified it on his behalf. Any such argument must fail. California law is crystal clear that for an  
5 attorney to verify a DFEH complaint, he must do so *in his own name*. The controlling case is  
6 *Blum v. Superior Court*:

7           We hold an attorney may verify a DFEH complaint for his or her client by  
8 *subscribing his or her own name to the complaint. The attorney may not verify by*  
9 *signing the client's name.* *Blum, supra*, at 428. (Emphasis added.)

10          Similarly, in *Greenly*, the Court rejected the plaintiff's argument that his attorney verified  
11 the DFEH complaint by signing the plaintiff's name to it, stating:

12          In *rare and prudent circumstances*, an attorney may indeed verify a DFEH  
13 complaint on behalf of his or her client. However, *an attorney may only do so "by*  
14 *subscribing his or her own name to the complaint" subject to the penalties of*  
15 *perjury.* In contrast, *the law is clear that "[t]he attorney may not verify by signing*  
16 *the client's name."* *Greenly, supra*, 13-14 (citations omitted) (emphasis added).

17          Here, the only name on Karagiosian's purported DFEH complaint is Karagiosian's own  
18 name. There is no mention of his attorney, and no indication that anyone other than Karagiosian  
19 was purporting to verify the complaint. Thus, as in *Greenly*, Karagiosian has failed to file a  
20 verified complaint, has failed to exhaust his administrative remedies, and Burbank is entitled to  
21 directed verdict as to his FEHA causes of action.  
22  
23  
24  
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27



1  
2 **IV. CONCLUSION**

3 For the foregoing reasons, Burbank respectfully submits that the Court should enter  
4 judgment in favor of Burbank as to Karagiosian's Second and Fifth causes of action in the First  
5 Amended Complaint, because each of those causes of action is barred by the affirmative defense  
6 that Karagiosian failed to exhaust his administrative remedies under FEHA.

7  
8 Dated: April 4, 2012

MITCHELL SILBERBERG & KNUPP LLP  
Lawrence A. Michaels  
Veronica von Grabow

9  
10 By: \_\_\_\_\_  
11 Veronica Von Grabow  
12 Attorneys for Defendants and Cross-  
13 Complainant CITY OF BURBANK,  
14 including the POLICE DEPARTMENT OF  
15 THE CITY OF BURBANK (erroneously  
16 sued as an independent entity named  
17 "BURBANK POLICE DEPARTMENT")  
18  
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27

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California.

4 I am over the age of 18, and not a party to the within action; my business address is First  
Legal Support Services, 1517 West Beverly Boulevard, Los Angeles, California 90026

5 On April 6, 2012, I served the foregoing document(s) described as **DEFENDANT CITY**  
6 **OF BURBANK'S BRIEF RE PLAINTIFF STEVE KARAGIOSIAN'S FAILURE TO**  
7 **EXHAUST ADMINISTRATIVE REMEDIES** which was enclosed in sealed envelopes  
addressed as follows, and taking the action described below:

8 Solomon E. Gresen, Esq., [seg@rglawyers.com](mailto:seg@rglawyers.com)  
9 Steven V. Rheuban, Esq., [svr@rglawyers.com](mailto:svr@rglawyers.com)  
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12 *Attorneys for Plaintiffs Cindy Guillen-Gomez, Steve Karagiosian, Elfego Rodriguez, and Jamal*  
*Childs*



**BY PERSONAL SERVICE:** I hand delivered such envelope(s):

14 ☐ to the addressee(s);

15 ☒ to the receptionist/clerk/secretary in the office(s) of the addressee(s).

16 ☐ by leaving the envelope in a conspicuous place at the office of the addressee(s)

17 between the hours of 9:00 a.m. and 5:00 p.m.

18 I declare under penalty of perjury under the laws of the State of California that the above is  
19 true and correct.

20 Executed on April 6, 2012, at Los Angeles, California.

21 ENAYAT HAJRAsouli

22 Printed Name

E-H

Signature